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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

A.B., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN'S AND FAMILY SERVICES BUREAU, Real Party in Interest.	A155809 (Contra Costa County Super. Ct. No. J17-01308)

After A.B. (Mother) gave birth to O.B. in December 2017, both tested positive for methamphetamine (meth), leading the Contra Costa County Children's and Family Services Bureau (the bureau) to detain O.B. Since then, O.B. has been diagnosed with a congenital heart condition that requires regular monitoring. Mother now petitions for extraordinary writ review of a November 2018 order terminating her reunification services, reducing her visitation with O.B., and setting a permanency-planning hearing under Welfare and Institutions Code[1] section 336.26. Mother contends that no substantial evidence supports the juvenile court's finding that she failed to make substantive progress in her treatment plan or its finding that there was no substantial probability she could safely resume custody of O.B. by the 12-month permanency-hearing date of February 8,

[1] All further unspecified statutory citations are to the Welfare & Institutions Code.

2019. Because substantial evidence does support those findings, and Mother has not shown that the court abused its discretion in reducing her visitation, we shall deny the petition.

Factual and Procedural History

Abused and abandoned by a drug-addicted father, Mother had a troubled adolescence, yet earned good grades, attended some college, and became a counselor at a program for children with disabilities. But in 2012, she began dating a drug addict and, in 2015, she began living with O.B.'s father E.M., also an addict.

E.M. drank, used meth, and abused Mother. While she was pregnant with O.B. in 2017, they became homeless and lived in her recreational vehicle (RV). In October 2017, E.M. beat her, stole from her, and abandoned her; at the end of her pregnancy, she moved in with her mother (Grandmother). Although Mother and O.B. tested positive for meth at O.B.'s birth, Mother denied having used meth, giving various implausible accounts of how she might unwittingly have ingested some of E.M.'s meth. The bureau promptly detained O.B. and filed a petition alleging that mental illness and/or substance abuse left both parents unable to care for her.[2]

On December 15, 2017, the court ordered O.B. placed with Grandmother, with weekly supervised visits for Mother. It scheduled a jurisdictional hearing and ordered that Mother receive services, including drug testing, substance abuse treatment, parenting education, and counseling. Mother agreed not to contest that she had "a substance abuse problem that inhibits her ability to parent" and a "history of mental health concerns" for which she was not being treated, and had suffered domestic violence. On February 8, 2018, the court sustained the petition and set a disposition hearing on March 1.

The bureau's disposition report noted that Mother clearly loved O.B., had begun taking medications for depression and anxiety and receiving counseling for domestic violence and drug abuse, and had consistently visited O.B. until January 29, 2018. On that

[2] The petition also makes allegations about O.B.'s father, but he has not pursued custody of O.B. or joined in mother's petition.

day, O.B. had heart problems and was hospitalized for several days. Mother visited the hospital, but was allegedly so agitated and abusive to Grandmother—who she saw as "stealing" O.B.—that she upset O.B., leading hospital staff to doubt Mother's sobriety. Grandmother refused to supervise further visits and, on February 8, the court ordered Mother to visit O.B. at the bureau.

The March 1 disposition report recommended reunification services, as Mother was bright, educated, and capable, but had not yet fully acknowledged her drug use or her role in O.B.'s detention, was not appearing for drug tests, and had burned bridges to her family. The court ordered that O.B. remain in Grandmother's care, with weekly visitation at the bureau, and set a review hearing for September 1.

Although Mother had begun outpatient treatment in January, she stopped attending after a few weeks. She later attributed her termination to stress caused by E.M. having found and beaten her, and then harassed her at the home of friends with whom she was staying, leading the friends to ask her to leave. From mid-February through April, Mother missed 12 consecutive weekly drug tests, delayed entering a residential drug-treatment program, and entered the program but then left after a week. She later revealed that she had been homeless for part of this time and resumed living with E.M. and using meth. But on May 1, she entered a 90-day inpatient drug-treatment program at Wollam House and began passing drug tests.

The court set a six-month review hearing for August 16. For that hearing, the bureau submitted a memo recommending continuing services. Noting Mother's lack of compliance before May, the memorandum also noted that she had since done well at Wollam House, was taking domestic-violence and parenting classes and receiving mental health care, and had graduated from the residential program on August 8. She was "fairly consistent" in visiting O.B. and interacted appropriately with her. But the bureau was concerned that she had missed a drug test on June 11 and that, on June 13, a drug-test

"pass kit"[3] addressed to her had been delivered to Grandmother's house. When confronted about the pass kit, she denied having ordered it.

The court continued the six-month review hearing to September 20. For that hearing, the bureau submitted a memo noting that Mother began outpatient treatment on August 23 but had not yet entered a sober living environment (SLE), though at least one SLE that let clients work to pay for the housing had rooms available. Deeming her "in early recovery," the bureau again recommended further services.

O.B., meanwhile, was hospitalized in August for observation after her heart briefly stopped beating several times; she was released with a monitor requiring extensive attention. At the September 20 hearing, her counsel contested the recommendation to continue services and the court scheduled an evidentiary hearing for October 26.

On that date, the bureau submitted a memo changing its recommendation to termination of services, as Mother had made "minimal progress" in the past month in "establishing . . . stability." The bureau had repeatedly tried to help her enter an SLE or shelter, but she "reported difficulties [and] barriers, or . . . just changed the subject," without adequately explaining the "issues, barriers, and problems." E.M. still had a key to her RV and had recently trashed it; on October 22, he was jailed on charges that included assault, burglary, and stalking. The same day, Mother failed to timely confirm a weekly visit with O.B., which was canceled. The bureau concluded that, while Mother had participated in services, she had not made the changes required to give O.B. a safe, stable home, especially given her medical needs.

The court held a three-session evidentiary hearing from October 29 to November 6. Mother offered letters confirming her (1) completion of Wollam House's residential program on August 6; (2) successful, ongoing participation in an outpatient program, with negative drug tests, since August 23; and (3) attendance at weekly therapy sessions since August 28. She testified that she attended Alcoholics Anonymous and Narcotics Anonymous meetings in person and online, but she offered no documentation and

[3] The "pass kit" contains chewable tablets that help detox the body in order to enable the user to pass a drug test.

admitted that she had not spoken with her sponsor in a month or "worked the steps" since leaving Wollam House on August 6. She also testified that she would not return to E.M., and had obtained a three-year restraining order against him. She also provided a long and confusing explanation for the delivery of the "pass kit" to Grandmother's house, allegedly ordered without her knowledge by a woman she had "just met" at Alcoholics Anonymous, yet to whom she had given her credit card information.

Mother acknowledged that her records show three missed drug tests since May, but insisted that she had missed one test in June because she "fell asleep" and that she had appeared for the other two but had been unable each time to provide a large enough sample. She acknowledged missing three visits with O.B. because she did not call by the deadline to confirm. She conceded that her last such failure, on October 23, was due in part to an inability to charge her phone, and that her RV lacks electricity—a point the bureau emphasized in light of the need for O.B.'s caretaker to have access to electricity to maintain one of her heart monitors.

Regarding her lack of stable housing, Mother testified that she had contacted each SLE to which she had been referred, but could not enter any because she had no income (and, as to one shelter, because it would not let her bring her car, RV, or cat). But she testified that she had recently agreed to move into an old friend's apartment in Sacramento, that the arrangement was not temporary, and that she would pay rent in an amount yet to be decided. Asked how she could do so, given her lack of income, she stated that she could get a job, as her resume is good. At the final session of the hearing, Mother's counsel represented that she had indeed moved into the apartment.

Mother related her understanding of O.B.'s heart syndrome and explained that she had attended one of O.B.'s medical appointments while she was hospitalized in January,[4]

[4] The record as to Mother's attendance at later appointments is ambiguous. Grandmother testified that she told the social workers of O.B.'s upcoming appointments and relied on them to inform Mother, that Mother had not attended any appointments since January, but that she did not know if the social workers had timely informed Mother of the appointments. Mother testified that her social workers only told her of appointments after the fact. No social workers testified.

had spoken with O.B.'s doctor, and had obtained her medical records. Grandmother testified that O.B. had been hospitalized twice. She periodically wears one of two types of heart monitor for either two weeks or 30 days at a time; doctors expect this will be necessary until O.B. is at least two and likely four years of age. The 30-day monitor transmits data to a nearby phone, which relays the data to a medical-monitoring company; if O.B.'s heart beats too fast, or stops, the phone alerts her caretaker to call for instructions. The caretaker must keep the phone charged and within 10 feet of O.B. at all times, and periodically change the monitor's batteries. If O.B. is not wearing a real-time monitor, her caretaker must watch for such symptoms as blue lips, lethargy, lack of appetite, or fussiness.

Grandmother testified that O.B.'s doctors had told her to "let [O.B.] go on like a normal child" but be "hypervigilant" for symptoms. On cross-examination, she testified that, except for the January hospital visit, nothing in Mother's visits with O.B. had caused her alarm; that Mother worked for several years with children with disabilities; and that she believes Mother should have a significant role in O.B.'s life.

In her closing argument, Mother's counsel listed those portions of the case plan she had completed, noted that Mother had just moved in with her friend, and urged the court to continue services until the 12-month date to give the social workers time to confirm the stability of that housing.

The court found O.B. "very fragile" and Mother "completely not credible," "extremely manipulative," and "very irresponsible." "I've listened carefully to all the evidence . . . [b]ut [Mother] is just not credible from the beginning to the end." The court noted Mother's positive drug tests, failure to offer proof of her attendance at AA or NA meetings, and inability to name her sponsor. The court called Mother's account of the pass-kit incident "absolutely ludicrous" and found her stated reasons for not entering an SLE "bogus." The court added that it "[did not] believe for a second" that Mother and E.M. will "stay apart after he gets out of custody."

The court found by clear and convincing evidence that returning O.B. to Mother's custody would create a substantial risk of harm, stating, "I do not find it conceivable that

this mother could care for this vulnerable child safely." It found that Mother had "failed to participate regularly in the court-ordered treatment program . . . and [had] not made substantive progress," and that there was no substantial probability that she could take custody of O.B. by the 12-month date, February 8, 2019, even if services were continued until that date.

The court also ordered Mother's visitation reduced from weekly to monthly. When counsel objected that Mother had visited O.B. consistently with no problems, the court replied that it did not find "any benefit to this child [from] any further visits with this mother, so I think one time a month is just fine."

Mother timely filed a notice of intent to file a writ petition, followed by her petition.

Discussion

A parent whose child is under age three when removed from her custody is entitled to receive reunification services for six months from the dispositional hearing, but no more than 12 months from when the child enters foster care. (§ 361.5, subd. (a)(1)(B).) At the six-month review hearing, the juvenile court must order the child returned to the parent unless it finds that doing so would create "a substantial risk of detriment" to the child's "safety, protection, or physical or emotional well-being." (§ 366.21, subd. (e)(1).) A parent's failure to participate regularly and make substantive progress in a treatment plan is prima facie evidence of such risk. (*Ibid*.) If the court finds such a failure by clear and convincing evidence, it may terminate services and set a permanent-placement hearing. (§ 366.21, subd. (e)(3).) But if, despite finding such a failure, the court also finds a substantial probability that the child still may be returned safely to the parent's custody by the 12-month date, it must continue the case to that date. (*Ibid.*; see *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1027–1028.)

The agency bears the burden of proving failure to participate and make substantive progress (§ 366.21, subd. (e)(1)); if it does so, the parent bears the burden of showing a substantial probability that the child may still be returned to her custody by the 12-month date. (See *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 847 [alluding to parent's

duty to "demonstrate a substantial probability of being able to reunite by the 12-month mark"].) We review an order terminating reunification services for substantial evidence. (*Fabian L. v. Superior Court*, *supra*, 214 Cal.App.4th at p. 1028.) We may not reweigh evidence or exercise independent judgment, are bound by the trial court's credibility determinations, and decide only if sufficient evidence supports its factual findings. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–689; *Estate of Young* (2008) 160 Cal.App.4th 62, 76.) The "ultimate test" is whether it was reasonable "to make the ruling in question in light of the whole record." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.)

Mother argues that, regardless of any credibility findings, undisputed evidence establishes that she participated in and satisfied many elements of her case plan—completing a residential drug-treatment program, participating in an outpatient program, receiving domestic-violence counseling and securing a restraining order against E.M., receiving therapy and psychiatric care, and consistently visiting O.B. and interacting appropriately with her, missing only three visits in nearly 11 months. But while Mother did make commendable progress in some respects, substantial evidence nonetheless supports the finding that she failed to participate regularly and make substantive progress in other crucial programs and aspects of her case plan. She admitted not having communicated with her sponsor for a month and not having "worked the steps" since early August, and the court found her uncorroborated testimony about attending meetings not credible—a finding that binds this court on review. (*Estate of Young*, *supra*, 160 Cal.App.4th at p. 76)

Mother also had failed, over nearly nine months to secure a stable home for herself and O.B. The court found "bogus" her testimony that she could not afford any of the many SLEs or shelters to which she was referred, and that none had available rooms that did not require cash payment. Although Mother testified that she had arranged on the eve of the hearing to move into a friend's apartment, and her counsel later represented that she had in fact done so, this alleged eleventh-hour development did not preclude a finding that she had failed to secure a stable, suitable home. Mother argues that the bureau could

have verified her claim about the apartment "had services been continued or even if the matter had simply been continued briefly." The six-month review hearing, however, had already been continued more than once, commencing nearly nine months after the order sustaining the petition and ending three months before the one-year date of February 8, 2019. Moreover, Mother did not ask the court to continue the hearing again. In all events, Mother bore the burden of proving a substantial probability that O.B. might safely be returned to her custody by February 8 if services were continued, and her testimony about the housing arrangement did not compel such a finding. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

Substantial evidence also supports the finding that Mother did not satisfy the requirement that she receive negative results on all drug/alcohol tests for six months. The court did not credit her testimony that she failed to appear for a test on June 11 because she fell asleep, finding instead that she had ordered the pass kit delivered on June 13, deeming her contrary story "absolutely ludicrous," and stating that her purchase "tells you about what she thinks about drug-testing and about drugs." And, while Mother did secure a three-year restraining order against E.M., the court did not believe her avowal that she would not get back together with him, as she did in April after he had beaten her. The juvenile court's credibility determinations are binding on this court and provide further support for its ultimate conclusions.

Mother's final claim is that the juvenile court abused its discretion in reducing her visitation from weekly to monthly. Aside from the extraordinary circumstances of the January hospital visit, Mother argues that she acted appropriately during visitation, the visits did not adversely affect O.B., and she missed only three in eleven months. She also notes that, because Grandmother testified she wants Mother to continue playing a role in O.B.'s life, this is not a case in which it is necessary to reduce visitation in order to facilitate a child's transition. However, "[a] juvenile court's determination as to whether parental visits are in the best interests of a dependent child may be reversed only upon a clear showing of abuse of discretion," which requires that a court have "exceeded the bounds of reason." (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) Here, the court

found no benefit to O.B. from "any further visits with this mother." When a court terminates reunification services, a parent's interest in their child's companionship ceases to be paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Mother's argument establishes at most that weekly visits were not harmful—not that they provided O.B. any benefit. Mother thus fails to show that the order reducing visitation was contrary to O.B.'s best interests, and we cannot say that it exceeded the bounds of reason.

Disposition

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452(h).) The request for a stay is denied as moot. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(a).)

Pollak, P.J.

We concur:

Tucher, J.
Brown, J.